

立法會
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Paper for the House Committee

**Report of the Subcommittee on Proposed Resolution
under Section 4(5) of the Fatal Accidents Ordinance (Cap. 22)**

Purpose

This paper reports on the deliberations of the Subcommittee on the Proposed Resolution under Section 4(5) of the Fatal Accidents Ordinance (Cap. 22) ("the Subcommittee").

Background

2. Enacted in 1986, the Fatal Accidents Ordinance (Cap. 22) ("the Ordinance") allows an action for damages to be brought against a person for the benefit of the dependants of the deceased in respect of that person's wrongful act, neglect or default which has caused the death of the deceased. An action under the Ordinance may include a claim for damages for bereavement in the sum as prescribed in section 4(3) ("the bereavement sum"). Section 4(5) of the Ordinance provides that the Legislative Council ("LegCo") may by resolution vary the sum.

3. The bereavement sum was initially set at \$40,000. This sum was increased to \$70,000 in 1991, by a resolution moved by the then Attorney General. The sum was further increased to the current sum of \$150,000 in April 1997, by a resolution moved by a Member at the Council meeting of 16 April 1997. Speaking in support of the resolution at the above Council meeting, the then Attorney General undertook to review the sum every two years.

4. At the meeting of the Panel on Administration of Justice and Legal Services ("the Panel") on 28 May 2018, the Administration consulted members on the following proposals:

- (a) a resolution be moved by the Secretary for Justice ("SJ"), within the 2017-2018 legislative session, to increase the bereavement sum under section 4(3) of the Ordinance from \$150,000 to \$220,000 which was capable of reflecting liberally the cumulative impact of inflation experienced over the period from March 1997 to March 2018; and
- (b) a review of the bereavement sum be conducted by the Administration hereafter to reflect inflation by making reference to the Consumer Price Index (A) ("CPI(A)") every two years.

5. The Panel supported the proposals in paragraph 4.

Proposed resolution under section 4(5) of the Fatal Accidents Ordinance (Cap 22)

6. SJ gave notice to move a resolution pursuant to section 4(5) of the Ordinance at the Council meeting of 13 June 2018 to seek LegCo's approval to amend section 4(3) of the Ordinance to increase the bereavement sum from \$150,000 to \$220,000 ("the Proposed Resolution").

The Subcommittee

7. At the meeting of the House Committee on 1 June 2018, Members agreed to form a subcommittee to study the Proposed Resolution. The membership list of the Subcommittee is in **Appendix I**. At the request of the House Committee, SJ withdrew her notice for moving the Proposed Resolution to allow time for the Subcommittee to study it in detail.

8. Under the chairmanship of Hon Holden CHOW Ho-ding, the Subcommittee held two meetings on 8 and 19 June 2018 to examine the Proposed Resolution, including one meeting to discuss with the Administration.

Deliberations of the Subcommittee

9. In the course of deliberations, members express concerns and views on various issues relating to the bereavement sum such as the failure of the Administration to propose timely adjustment, the level of the sum, the review mechanism and classes of recognized dependants entitled to claim for the bereavement sum, etc. The deliberations are summarized in the ensuing paragraphs.

Failure of the Administration to propose timely adjustment of the bereavement sum

10. Members express grave concerns that the bereavement sum has not been adjusted since 1997 and that the benefits of dependants of the deceased are not well taken care of. Some members consider that the Administration should be held responsible for the undue delay.

11. The Administration responds that in 2000, it conducted a review of the bereavement sum and reached the view that there was no basis for increasing the sum at that stage considering, inter alia, the drop in consumer price index between 1997 and 2000 and the Panel was informed of the result. According to the Administration, the overall downward trend in the cumulative inflation rate continued and CPI(A) returned to the 1997 level only by March 2010.

12. The Administration commenced a review of the bereavement sum in mid-2014 and proposed to increase the bereavement sum to \$190,000, having made reference to the cumulative inflation as measured by CPI(A). When the two legal professional bodies were consulted, they counter-proposed that the amount be adjusted to \$250,000 on the ground that the increase should take not only the inflation but also the "changing social and economic conditions of Hong Kong" into account. The Administration then deliberated the counter-proposal internally including consulting the Office of the Government Economist and the Census and Statistics Department and concluded that the "changing social and economic conditions of Hong Kong" could embrace many different aspects, including but not limited to population growth and structure, public health, housing, social welfare, crime, social stability, economic growth, business performance, inflation, employment earnings and income, and no single indicator could serve the purpose of manifesting the changing social and economic conditions in a nutshell. Therefore, an adjustment based on inflation by making reference to CPI(A) could provide a simple and objective methodology for the coming and future reviews of the bereavement sum.

13. The Administration acknowledges that it could have proceeded more expeditiously in the present exercise to review the bereavement sum. It undertakes to ensure that a review of the bereavement sum to reflect inflation will be conducted every two years with the result to be reported to the Panel accordingly.

The level of bereavement sum

14. Some members consider that, even after the increase, the level of bereavement sum is too low to meet the financial needs of the dependants of the deceased in fatal accidents. They wonder whether the baseline of the bereavement sum set in the 1980s, i.e. \$40,000, was too low.

15. In reply, the Administration explains that the original bereavement sum was recommended by the Law Reform Commission of Hong Kong ("LRC") in its report on "Damages for Personal Injury and Death" published in 1984. The sum was set after making reference to the amount of damages for bereavement awarded in other common law jurisdictions.

16. A member notes that the claim for bereavement sum is to be brought against a person for the benefit of the dependants of the deceased in respect of that person's wrongful act, neglect or default which has caused the death of the deceased. As such, he considers that the bereavement sum should provide sufficient deterrent to prevent the occurrence of such wrongful act, neglect or default but the current level is too low to achieve that effect.

17. Another member is of the view that, as the family size in Hong Kong is in general much smaller than that in 20 years ago, the bereavement suffered by dependants for the loss of a family member is more acute, in particular if the deceased is the chief breadwinner of the family. He suggests that the level should be increased substantially to, say, \$500,000.

18. In response, the Administration advises that the introduction of an award for bereavement was recommended by LRC as a measure of compensation for grief and loss of society and guidance, and the level was set having regard to the practice in that regard in other jurisdictions. It further advises that the award of the bereavement sum will not affect other lawful claims for damages other than for grief, such as the loss of income and future earnings, to be made by the dependants concerned.

Mechanism for reviewing the bereavement sum

19. Members in general support conducting biennial reviews of the bereavement sum to reflect the inflation trend by making reference to CPI(A). However, they urge the Administration to comprehensively review the bereavement sum in, say, every six years as proposed by The Law Society of Hong Kong. They also suggest that such reviews should take into account factors which are not captured in the measurement of CPI(A), such as the "changing social and economic conditions of Hong Kong".

20. The Administration responds that, in the review conducted in 2014 as mentioned in paragraph 12, it has studied the proposal of the two legal professional bodies and the methodology for adjusting the sum of similar compensation adopted in other common law jurisdictions. The conclusion of the Administration is that there is no single indicator that can serve the purpose of manifesting the changing social and economic conditions in a nutshell, and an adjustment based on inflation by making reference to CPI(A) can provide a simple and objective methodology for the coming and future reviews of the bereavement sum.

21. The Administration replies that it will continue to listen to the views of members as well as the two legal professional bodies and consider whether a comprehensive review will be conducted.

Classes of recognized dependants eligible to claim for the bereavement sum

22. A member has enquired about the classes of recognized dependants who may claim for the bereavement sum under the Ordinance. In particular, whether a dependant of a deceased person in a marriage not recognized under the Hong Kong legislation, such as same-sex marriage or polygamy, will be entitled to claim for the bereavement sum. He also questions whether the classes of recognized dependants in Hong Kong are more limited than other jurisdictions since same-sex marriage is not legalized.

23. In reply, the Administration advises that the persons who may claim for damages for bereavement for their benefit are stipulated in section 4(2) of the Ordinance. It is of the view as a matter of statutory interpretation that the husband and wife referred to in section 4(2)(e) of the Ordinance mean only to spouses in a heterosexual marriage. The Administration further advises that comparing with individual overseas jurisdictions, the classes of recognized dependants entitled to claim for the bereavement in Hong Kong, other than dependant of a deceased person in a marriage not recognized under the Hong Kong legislation, are generally

more diverse. In response to members' request, the Administration has provided written information on this subject to the Subcommittee in the **Appendix II**.

Claims for bereavement sum against the Government

24. At the Subcommittee meeting on 19 June 2018, Mr HUI Chi-fung pointed out that it was he who first gave notice to move a resolution pursuant to section 4(5) of the Ordinance at the Council meeting of 9 May 2018 to increase the bereavement sum from \$150,000 to \$220,000.

25. Mr HUI Chi-fung notes that, in its comments given to the LegCo Secretariat regarding his proposed resolution, the Administration expresses that his proposed resolution has charging effect as the Government may be sued for damages for bereavement by dependants of persons killed as a result of tortious acts committed by the Government itself or by its servants or agents.¹ He asks for the number of claims for bereavement sum made against the Government and the amounts claimed in recent year.

26. The Administration replies that, between 2013 and 2017, there is a total number of 18 fatal accidents claims involving 19 deceased brought against the Government and, based on the statutory sum of \$150,000, the amount of bereavement sum claimed should be about \$3 million. The Administration further advises that the figure has not included claims for damages other than for bereavement sum.

27. Mr HUI Chi-fung informs members of his intention to give a fresh notice to move a resolution under section 4(5) of the Ordinance to increase the bereavement sum from \$150,000 to \$220,000 at the coming Council meetings.

Recommendations

28. The Subcommittee raises no objection to the Proposed Resolution and notes that the Administration will give fresh notice for moving the motion at the Council meeting of 11 July 2018.

¹ Appendix 1 of the President's letter dated 27 April 2018 to Hon HUI Chi-fung (LC Paper No. CB(3)543/17-18)

Advice sought

29. Members are invited to note the deliberations of the Subcommittee.

Council Business Division 4
Legislative Council Secretariat
3 July 2018

**Subcommittee on Proposed Resolution
under section 4(5) of the Fatal Accidents Ordinance (Cap. 22)**

Chairman Hon Holden CHOW Ho-ding

Members Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
 Hon Paul TSE Wai-chun, JP
 Hon CHAN Chi-chuen
 Dr Hon KWOK Ka-ki
 Hon POON Siu-ping, BBS, MH
 Dr Hon Junius HO Kwan-yiu, JP
 Hon CHEUNG Kwok-kwan, JP
 Hon HUI Chi-fung

(Total: 9 members)

Clerk Mr Lemuel WOO

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21 June 2018

Mr Lemuel WOO
Clerk to Subcommittee on Proposed Resolution
under Section 4(5) of the Fatal Accidents Ordinance (Cap 22)
Legislative Council Complex
1 Legislative Council Road
Central
Hong Kong

Dear Mr WOO,

**Subcommittee on Proposed Resolution under Section 4(5) of the
Fatal Accidents Ordinance (Cap 22)**

At the captioned meeting, Members requested the Government to provide information on how the classes of recognized dependants entitled to claim for the statutory sum to be awarded as damages for bereavement under the *Fatal Accidents Ordinance* (Cap. 22) (**the “Ordinance”**) compared with that of similar compensations in overseas jurisdictions. Our reply is set out in the ensuing paragraphs.

Hong Kong

2. Section 4(2) of the Ordinance sets out the classes of persons

who are entitled to claim for the statutory sum to be awarded as damages for bereavement under the Ordinance, as follows:

- “(a) the wife or husband of the deceased, unless they had been living apart for a continuous period of at least 2 years immediately preceding the death of the deceased; or
- (b) where there is no spouse by or for whom a claim can be made under paragraph (a), the children of the deceased; or
- (c) where there is no person by or for whom a claim can be made under paragraph (a) or (b), the wife or husband of the deceased (notwithstanding that they had been living apart); or
- (d) where there is no person by or for whom a claim can be made under paragraph (a), (b) or (c), any concubine taken by the deceased before 7 October 1971; or
- (e) where there is no person by or for whom a claim can be made under paragraph (a), (b), (c) or (d), any person who -
 - (i) was living with the deceased in the same household immediately before the date of his death; and
 - (ii) had been living with the deceased in the same household for at least 2 years before that date, as the husband or wife of the deceased; or
- (f) where there is no person by or for whom a claim can be made under paragraph (a), (b), (c), (d) or (e), the parents of the deceased or (if the deceased was illegitimate) his mother; or
- (g) where there is no person by or for whom a claim can be made under paragraph (a), (b), (c), (d), (e) or (f), but the deceased was at the date of his death a minor, any person who during any marriage to which that person was a party treated the deceased

as a son or daughter of the family in relation to that marriage;
or

- (h) where there is no other person by or for whom a claim can be made under this subsection, any brother or sister of the deceased.”

3. Section 2 sets out the general interpretation provisions of the Ordinance. Section 2(1) defines the term “wife” as follows:

- “(a) in the case of a Christian marriage or its civil equivalent, the lawful wife; and

- (b) in the case of any other lawful marriage-
 - (i) the lawful wife of such marriage; or
 - (ii) if there is more than one lawful wife, the lawful principal wife recognized as such by the personal law of the husband of such marriage, or if there is no lawful principal wife, the lawful wives so recognized.”

4. We have researched into the law of five common law jurisdictions which provide for statutory bereavement damages in a fixed sum, namely England and Wales and the provinces of Alberta, Manitoba, Saskatchewan and Yukon in Canada, and set out below the classes of persons entitled to statutory bereavement damages in the five jurisdictions.

England and Wales

5. In England and Wales, section 1A(2) of the *Fatal Accidents Act 1976* (c.30) provides that a claim for damages for bereavement shall only be for the benefit:

- “(a) of the wife or husband or civil partner of the deceased; and

- (b) where the deceased was a minor who was never married or a

civil partner—

- (i) of his parents, if he was legitimate; and
- (ii) of his mother, if he was illegitimate.”

Canada

6. In Canada, the jurisdictions that provide for statutory damages for bereavement in fixed amounts are Alberta, Manitoba, Saskatchewan and Yukon.

7. In **Alberta**, section 8 of the *Fatal Accidents Act* (R.S.A. 2000 c. F-8), provides that the court shall award damages for grief and loss of guidance, care and companionship of the deceased person to the following persons:

- (a) the spouse or adult interdependent partner¹ of the deceased person if the spouse or adult interdependent partner was not living separate and apart from the deceased person at the time of death;
- (b) the parent(s) of the deceased person; and
- (c) the child(ren) of the deceased person.

8. In **Manitoba**, section 3.1(2) of the *Fatal Accidents Act* (C.C.S.M. c F50) provides that the court shall award damages for the loss of guidance, care and companionship of the deceased to the following

¹ Section 3 of the *Adult Interdependent Relationship Act* (S.A. 2002 c. A4-5) defines “adult interdependent partner” as follows:

“3(1) Subject to subsection (2), a person is the adult interdependent partner of another person if

- (a) the person has lived with the other person in a relationship of interdependence
 - (i) for a continuous period of not less than 3 years, or
 - (ii) of some permanence, if there is a child of the relationship by birth or adoption,
 or
 - (b) the person has entered into an adult interdependent partner agreement with the other person under section 7.
- (2) Persons who are related to each other by blood or adoption may only become adult interdependent partners of each other by entering into an adult interdependent partner agreement under section 7.”

persons:

- (a) the spouse of the deceased;
- (b) the common-law partner² of the deceased;
- (c) the support recipient³ of the deceased;
- (d) the parent(s) of the deceased;
- (e) the child(ren) of the deceased; and
- (f) the family member(s)⁴ of the deceased.

9. In **Saskatchewan**, section 4.1 of the *Fatal Accidents Act* (c F-11) provides that the court shall award damages for grief and loss of guidance, care and companionship of the deceased person to the following persons:

- (a) the spouse⁵ of the deceased person who was not living separate

² Section 1 of the Act defines a “common-law partner” as follows

- “(a) a person who, with the deceased, registered a common-law relationship under section 13.1 of *The Vital Statistics Act*, and who was cohabiting with the deceased immediately preceding the death of the deceased, or
- (b) a person who, not being married to the deceased, cohabited with him or her in a conjugal relationship
 - (i) for a period of at least three years immediately preceding the death of the deceased, or
 - (ii) for a period of at least one year immediately preceding the death of the deceased and they are together the parents of a child.”

³ Section 1 of the Act defines a “support recipient” as “a person to whom the deceased was, at the time of his or her death, required to pay support pursuant to a valid and subsisting written agreement or court order”.

⁴ Section 3.1(1) of the Act defines “family member” as follows:

- “(a) a son or daughter of the deceased who, at the time of the death of the deceased, was 18 years of age or over,
- (b) a step-son or step-daughter of the deceased, or a person to whom the deceased stood in loco parentis,
- (c) a step-mother or step-father of the deceased, or a person who stood in loco parentis to the deceased, and
- (d) a brother, sister, grandson, granddaughter, grandfather or grandmother of the deceased.”

⁵ Section 1(d) of the Act defines “spouse” as follows:

- “(i) the wife or husband of the deceased; or
- (ii) a person with whom the deceased cohabited as spouses:

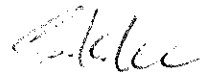
and apart from the deceased person at the time of the deceased's death;

- (b) the parent(s) of the deceased; and
- (c) the child(ren) of the deceased.

10. In **Yukon**, under section 3.01(2) of the Fatal Accidents Act, the court shall award damages for grief and the loss of guidance, care and companionship to the following persons:

- (a) the spouse⁶ of the deceased person who was not living separately and apart from the deceased when the deceased died;
- (b) the father and mother of the deceased; and
- (c) the daughter(s) and son(s) of the deceased.

Yours sincerely,



(Miss S K LEE)

Deputy Solicitor General (Policy Affairs) (Ag.)

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- (A) continuously for a period of not less than two years; or
 - (B) in a relationship of some permanence, if they are the parents of a child."

⁶ Section 1 of the Act defines "spouse" as "an individual who, when the deceased died
(a) was married to the deceased (including in a marriage that was voidable but had not been voided by order of a court), or
(b) cohabited with the deceased as a couple and had done so throughout the immediately preceding twelve months."